

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	File No. x18ed0002
)	
KANZA, Inc.)	Ref. Facility ID #42384
)	KRLI(FM), Malta Bend, MO

ORDER

Adopted: March 23, 2000

Released: March 24, 2000

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an investigation into whether KANZA, Inc. ("KANZA") complied with Section 310(d) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 310(d)¹ and the Commission's time brokerage policies.

2. On October 22, 1999, the Chief, Mass Media Bureau, released a Notice of Apparent Liability ("NAL"), DA 99-2259. The NAL determined that it appeared KANZA, not the licensee of record, Miles Carter, controlled KRLI(FM), Malta Bend, Missouri. The Bureau asserted that it appeared that: 1) KRLI had no employees; 2) KRLI was operated in conjunction with KANZA stations KAOL(AM), KNZU(FM) and WHB(AM) out of a common main studio location; 3) KANZA employed Miles Carter; and 4) KANZA directly paid for various KRLI expenses, including property insurance on station equipment, utilities, telephone, news programming, promotions/advertisements, and maintenance of station equipment. After considering the circumstances in light of the Commission's Forfeiture Policy Statement,² which provides a base forfeiture of \$8,000 for an unauthorized transfer of control, the Chief, Mass Media Bureau, proposed a forfeiture of \$8,000. In addition, the Chief, Mass Media Bureau, directed that the parties submit within 30 days of the date of the NAL a plan to come into compliance with the Commission's rules and policies concerning control.

3. On November 22, 1999, KANZA filed a response to the NAL, in which it contended that its involvement with KRLI was no more extensive than what had been found legal in other time brokerage cases. Nevertheless, KANZA also submitted an "Amended and Restated Time Brokerage Agreement" ("Amended Agreement") dated November 16, 1999.³ The Amended

¹ See also 47 C.F.R. § 73.3540.

² 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, released December 28, 1999.

³ A companion Notice of Apparent Liability, DA 99-2258, released October 22, 1999, was sent to Miles Carter. By letter dated November 22, 1999, Miles Carter advised, *inter alia*, that he had resigned from KANZA's employ and had paid the forfeiture.

Agreement revised a Time Brokerage Agreement between KANZA and Miles Carter, which had been entered into on October 17, 1996, shortly before KRLI commenced broadcasting. Among other things, the Amended Agreement provides that, except for expenses related to programming created and provided by KANZA, Miles Carter shall be responsible for paying all direct operating costs of the station. In addition, the Amended Agreement provides that Miles Carter shall employ at KRLI a general manager and any other personnel required by the Commission's rules and policies.

4. The staff and KANZA have negotiated the terms of a Consent Decree that would terminate this proceeding. A copy of the Consent Decree is attached hereto and incorporated by reference.

5. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating this proceeding.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C §§ 154(i) and 154(j), and the authority delegated in Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the attached Consent Decree is hereby ADOPTED.⁴

7. IT IS FURTHER ORDERED that the above captioned forfeiture proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁴ In this regard, the voluntary contribution referenced in the Consent Decree shall be paid by a check or money order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order to "Acct. No. x18ed0002." The remittance is to be paid to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (the "Commission") and KANZA, Inc. ("KANZA") hereby enter into this Consent Decree for the purpose of terminating a forfeiture proceeding arising from questions related to KANZA's possible assumption of control of Station KRLI(FM), Malta Bend, Missouri, which is licensed to Miles Carter.

Background

2. On October 22, 1999, the Chief, Mass Media Bureau ("Chief, MMB"), released a Notice of Apparent Liability ("NAL"), DA 99-2259. The Chief, MMB, determined that it appeared KANZA, not the licensee of record, Miles Carter, controlled KRLI(FM), Malta Bend, Missouri. The NAL noted that: 1) KRLI had no employees; 2) KRLI was operated in conjunction with KANZA stations KAOL(AM), KNZU(FM) and WHB(AM) out of a common main studio location; 3) KANZA employed Miles Carter; and 4) KANZA directly paid for various KRLI expenses. After considering the circumstances in light of the Commission's Forfeiture Policy Statement, the Chief, MMB, proposed a forfeiture of \$8,000. In addition, the Chief, MMB, directed that the parties submit within 30 days of the date of the NAL a plan to come into compliance with the Commission's rules and policies concerning control.

3. On November 22, 1999, KANZA submitted an "Amended and Restated Time Brokerage Agreement" ("Amended Agreement") and reported that Miles Carter had resigned from KANZA, effective November 16, 1999. The Amended Agreement revised a Time Brokerage Agreement between KANZA and Miles Carter, which had been entered into on October 17, 1996, shortly before KRLI commenced broadcasting. Among other things, the Amended Agreement provides that, except for expenses related to programming created and provided by KANZA, Miles Carter shall be responsible for paying all direct operating costs of the station. The Amended Agreement further provides that Miles Carter shall employ at KRLI a general manager and any other personnel required by the Commission's rules and policies.

Definitions

4. For purposes of this Consent Decree, the following definitions shall apply:

- (a) The "Commission" means the Federal Communications Commission.
- (b) The "Bureau" means the Enforcement Bureau of the Commission.
- (c) KANZA means KANZA, Inc. and its successors and assigns to the extent that they remain a party to the Amended Agreement referenced herein.
- (d) "Order" means the Bureau's order adopting this Consent Decree.
- (e) "Amended Agreement" means the November 16, 1999, Amended and Restated Time Brokerage Agreement, between KANZA and Miles Carter, licensee of

Station KRLI(FM), Malta Bend, Missouri, a copy of which was submitted to the Commission on November 22, 1999, by KANZA.

- (f) “NAL” means the Notice of Apparent Liability, DA 99-2259, released October 22, 1999, signed by the Chief, Mass Media Bureau.
- (g) The “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*

Agreement

5. KANZA acknowledges and agrees that the Commission has jurisdiction over the matters referenced in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. KANZA and the Bureau acknowledge and agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination, regarding any violation of Section 310(d) of the Act, 47 U.S.C. § 310(d), that may have been committed with respect to KANZA’s involvement in the construction and operation of Station KRLI(FM), Malta Bend, Missouri, prior to November 16, 1999. KANZA and the Bureau acknowledge and agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, KANZA does not admit any violation set forth in the NAL. Indeed, KANZA expressly denies any such violation.

6. KANZA and the Bureau acknowledge and agree that this Consent Decree shall constitute a final settlement between them.

7. In express reliance on the covenants and representations contained herein, the Bureau shall terminate the forfeiture proceeding commenced by the NAL at such time as the Bureau adopts this Consent Decree.

8. KANZA promises to adhere to the Amended Agreement, which, on its face, is consistent with the Commission’s rules and policies regarding time brokerage agreements. KANZA further promises to alter the Amended Agreement in accordance with paragraph 11.5 thereof if the Commission’s rules and policies regarding time brokerage agreements change and thereby render any part of the Amended Agreement illegal. In the event such alteration cannot be effectuated, KANZA promises to terminate the Amended Agreement in accordance with paragraph 11.5 thereof.

9. KANZA shall make a voluntary contribution to the United States Treasury in the amount of five thousand dollars (\$5,000) within 10 days after the Order adopting this Consent Decree is no longer subject to reconsideration, appeal or review in accordance with the Act and the Commission’s rules.

10. KANZA waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without modification.

11. The effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without modification.

12. In the event any court of competent jurisdiction renders this Consent Decree invalid, the Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

13. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither KANZA nor the Commission will contest the validity of the Consent Decree or Order, and KANZA will waive any statutory right to a trial *de novo*.

14. KANZA agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. §§ 1.1501 *et seq.*

15. Any violation of the Consent Decree or the Order adopting this Consent Decree will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

16. Any provision of this Consent Decree affected by or inconsistent with any subsequent rule or order adopted by the Commission will be superseded by such Commission rule or order.

17. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU

By: _____
David H. Solomon
Chief, Enforcement Bureau

_____ Date

KANZA, Inc.

By: _____
Michael L. Carter
President

_____ Date